



House of Commons Debates

FOURTH SESSION—SIXTH PARLIAMENT.

SPEECHES OF HON. EDWARD BLAKE, M.P., ON THE INTERPRETATION ACT AMENDMENT,

AND

CRIMINAL LAW AMENDMENT.

THURSDAY, APRIL 10TH, 1890.

Mr. BLAKE. I would very much like to know, in fuller detail from the hon. Minister of Justice, how far these proposed alterations are in accord with what he understands to be the present practice of interpreting statutes in the same regard in England, and to what extent they are in accord with what has been adopted in the Provinces; because I cannot conceive anything of greater consequence than that we should not without reason create diversities in the principles of interpretation. Our great difficulty, I might almost say our great scandal, at present, is the uncertainty of the law, and if we change the principle of interpretation, we deprive ourselves of the light given by the great body of judicial construction to statutes.

Mr. BLAKE. It seems to me reasonable that we should not repeal any Act which is not in force. If we perform the unnecessary operation of doing that, we expose ourselves to the judicial view that we are doing something that we think necessary, and that we did suppose that it was in force or we should not have repealed it. Of course, we are just now passing a law for all time—not to meet contingencies which we have already got rid of, or the case of obsolete laws; but we are adopting a canon of construction and interpretation which is to apply to Acts of Parliament which have been passed since Confederation, and which will be passed in the future. Taking it as a general proposition, that as law makers we do not undertake to repeal a law that is not in force, it is a fair inference, from the fact of our repealing it, that we assumed that it was then in force. What I dread, from the whole plan of the Bill, is that some of those landmarks of decision, those judicial inferences which have been drawn from time to time, may be got rid of—that everything may be left at large and loose to create fresh uncertainty as to the construction and interpretation of the law.

Mr. BLAKE. That is just the question, whether it is not a fair inference, from the solemn legislative Act of this Parliament repealing a law, that this Parliament conceived there was a law to repeal.

Mr. BLAKE. I am not aware of the particular case to which the Minister of Justice has alluded, but I presume it was one which the Provincial Legislature thought came within their jurisdiction, and that the repeal by this Parliament was *ultra vires*. I cannot see any other ground on which the Provincial Legislature could interfere at all in the matter. We well know there was a certain class of legislation before Confederation—perhaps more than one class—in respect of which there was a somewhat divided authority after Confederation, which rendered it necessary, in order to effect a complete repeal, that there should be legislation both provincial and federal. But no inference can be drawn from such cases to apply to cases which arise after Confederation.

Mr. BLAKE. The action of Parliament with reference to a pre-existing law may be said to consist of two divisions—amendment and declaration. There may be cases in which Parliament may think the courts have not fairly interpreted the meaning which Parliament intended to give to an Act, and Parliament may exercise the somewhat delicate power of declaring what it meant by its former Act, and may thus interpret its own legislation. That would be an Act declaring, not that the legislation in itself was ever different from what Parliament declared it to be, but that such was the meaning of the law *ab initio*. That is declaration. The other form is that of amendment, and it is with that this sub-section deals. If you amend, you do change. You may change for the better or worse, but an amendment is, or is intended to be, a change, and when we proceed to say, that in performing an act, the very essence

of which is change, the presumption is not to be one of an intent to change, we are performing again what is a very extraordinary operation, and once again getting rid of what, upon the whole, has seemed to me to be not an inconvenient view on the part of the judiciary. It is quite true that the construction may be sometimes, as to this and the other instances, a fiction. But with reference to this sub-section, I think it must be plain that when a body of legislators engage in the process of amending a law, they indicate, by that very act, their view that they are changing the law, or, at any rate, it must be presumed that those in that body who are mainly responsible for the legal and formal portions of the legislation, are engaged in such a process. On the whole, it seems to me that the same objection which applies to the first section applies to this one.

CRIMINAL LAW AMENDMENT.

Mr. BLAKE. I would ask the Minister of Justice if there is any sufficient reason for the limitation of the age to twenty-one years, because, if I have not been misinformed, very painful cases have occurred where the age was over twenty-one, and where the impoverished condition of the unfortunate woman, and her state of subordination, was the cause of the seduction?

Mr. BLAKE. I doubt very much whether there is any other class of cases in which there is more danger of brutalising people than in the class of cases dealt with in this clause 3, and I would suggest that the penalty of whipping be added.

Mr. BLAKE. I regret to say that we sometimes read of cases of such assaults on daughters of very tender years. What opportunity have we to secure the conviction of the guilty party, under these circumstances, and to procure the necessary evidence? The main thing we have to grapple with is the crime of greatest enormity which can be committed: that of a father taking advantage of his almost absolute power over his young child, and will not the liability of the child to a long imprisonment be an additional obstacle to securing the necessary evidence?

Mr. BLAKE. The question with which we are now dealing is one of considerable importance to-day, and it may be of still more importance in the future. I think it is not unfit that we should have what the attitude of the Government is, with reference to the persons whose existence in our midst has given rise to this legislation. We have noticed from time to time in the public prints, reference, to visits of persons of high consideration and authority in the Dominion, to the settlement of these persons called Mormons, or Latter-Day Saints, in the North-West, and occasionally encouraging words have been used towards them with the suggestion, I believe, that they have got to obey our laws—but still encouraging words which it would seem to me were, perhaps, rather out of place. There are in the Province of Ontario, in various sections, certain small scattered communities of Mormons of the earlier period under the Joseph Smith dispensation, who remain monogamists, who, I believe, separated from the Church of the Latter-Day Saints on the occasion of the change

which was effected at the time of Brigham Young, and which change mainly consisted in the matter which we are now engaged in attempting to meet. With reference to such persons, we, of course, have nothing to say, but it is right to observe that the difficulties which the United States has had to contend with in respect to the Mormons of Utah since the Brigham Young dispensation are serious and growing; and that from time to time earnest efforts have been made to overcome what seems to be an almost insuperable difficulty, owing to the extraordinary solidarity of these people and their determination to persist in and to conceal all legal evidence, at any rate, of their practices. As far as one can judge, there is now a disposition on the part of a considerable number of these people—if not on the part of their authorities themselves—to seek some more congenial place, wherein they hope to be able to carry on these practices, for the sake of which they are prepared to give up their position in Utah. It seems to me, as far as I can judge, that it is in the course of an effort to find a resting-place elsewhere than in Utah that the settlement has been made in the North-West Territories; and being made under such circumstances, and as far as I can see, with such intention, I can only highly approve of the effort which the hon. Minister of Justice is making to provide stringent laws against the practices which are condemned by these clauses of the Bill. But I think it well, also to say that the question is, in more respects than this, a serious one, and that it calls upon us for some very strong expression of sentiment in discouragement of the settlement of Mormons with these peculiar views and notions in our midst. I happen to have before me a copy of the will of Brigham Young, in which he made careful provision—I do not know how ample, because I do not know what his estate was—for his rather numerous family. They are divided into some twenty-three or twenty-four classes, the earlier of which consists each of a wife and the child or children by that wife, and the latter of a batch of wives who seem to have been childless. In the course of this will he uses language which it may be useful for the hon. gentleman to know. After having made provision for these numerous persons, he says in the 14th clause:

"To avoid any question, the words married or marriage, in this will, shall be taken to have become consummate between man and woman, either by ceremony before a lawful magistrate or according to the order of the Church of Jesus Christ of Latter-Day Saints, or by their cohabitation in conformity to our custom."

Simple cohabitation, therefore, in conformity to the Mormon custom is one of the rules by which Mormon marriage shall be recognised. I find, in the compilation which contains this will, this statement with reference to Mormon marriages:

"Sometimes they have witnesses, sometimes not; if they think any trouble may arise from a marriage, or that a woman is inclined to be a little perverse, they have no witnesses, neither do they give marriage certificates, and if occasion requires it, and it is to shield any of their polygamous brethren from being found out, they will positively swear that they did not perform any marriage at all, so that the women in this church have but a very poor outlook for being considered honorable wives."

The same difficulties with reference to the regulation of the Utah Mormons, as distinguished from those to whom I referred, the old Mormons of the former dispensation, have crept up in another way. In 1889 a judgment of an associate justice

of the Supreme Court, Mr. Justice Anderson, was delivered, upon an application made by some of these Mormons to be admitted as citizens, upon which application the evidence of a number of persons was taken as to their views and principles. Evidence was given by no less than eleven persons who had been Mormons, some of whom had occupied very high positions in the church or organisation, and a number of details were given, which I will not weary the Committee by reading; I will refer simply to the conclusions of the learned judge, which are sustained by extracts from the evidence and from writings of the people. He says:

"During the ten days this investigation lasted not a word of evidence was introduced or offered showing that any preacher or teacher of the church ever, in a single instance, advised obedience to the laws against polygamy. On the contrary, the evidence in this case, and the whole history of the Mormon church in Utah, shows that it has persistently refused obedience to at least a portion of the laws of the Government, has insulted and driven United States officers from the territory, has denied the authority of the United States to pass laws prohibiting polygamy, as an unwarranted interference with their religion, and, generally, has antagonised and denounced the Government in almost every possible way."

Then the learned judge sums up the evidence brought before him as to the teachings of the church:

"First: That it is the actual and veritable Kingdom of God on earth, not in its fullness, because Christ has not yet come to rule in person, but for the present he rules through the priesthood of the church, who are His vicegerents on earth."

"Second: That this kingdom is both a temporal and spiritual kingdom, and should rightfully control and is entitled to the highest allegiance of men in all their affairs."

"Third: That this kingdom will overthrow the United States and all other Governments, after which Christ will reign in person."

"Fourth: That the doctrine of 'blood atonement' is of God, and that under it certain sins which the blood of Christ cannot atone for may be remitted by shedding the blood of the transgressor."

"Fifth: That polygamy is a command of God, which if a member obeys he will be exalted in the future life above those who do not."

"Sixth: That the Congress of the United States has no right under the constitution to pass any law in any matter interfering with the practices of the Mormon religion, and that the Acts of Congress against polygamy, and disfranchising those who practice it, are unwarrantable interferences with their religion."

"Can men be made true and loyal citizens by such teachings, or are they likely to remain so surrounded by such influences? Will men become attached to the principles of the constitution of the United States when they hear the Government constantly denounced as tyrannical and oppressive? It would be as unreasonable to expect such a result as it would be to expect to gather grapes from thorns or figs from thistles."

"It has always been and still is the policy of this Government to encourage aliens, who in good faith come to reside in this country, to become citizens; but when a man of foreign birth comes here and joins an organisation, although professedly religious, which requires of him an allegiance paramount to his allegiance to the Government, an organisation that impiously and blasphemously claims to be the kingdom of God, to control its members under His immediate direction, and yet teaches and practices a system of morals shocking to christian people everywhere, under which the marriage of a man to two or more sisters, or to a mother and daughter, is as much a sanction, an organisation that sanctions blood atonement as a means of grace, and murder as a penalty for nearly half a century has refused to acknowledge the supremacy of the United States, or render obedience to its laws, it is time for the courts to pause and enquire whether such an applicant should be admitted to citizenship."

"The evidence in this case establishes unquestionably that the teachings, practices and aims of the Mormon church are antagonistic to the Government of the United

States, utterly subversive to good morals and the well-being of society, and that its members are animated by a feeling of hostility towards the Government and its laws, and, therefore, an alien who is a member of said church is not a fit person to be made a citizen of the United States."

And the applications were refused. I observe that it is stated that the Mormons who have settled in Canada are not now practising polygamy, though some authorities, who appear to have investigated the matter, say there is a suspicious disproportion of the sexes among them. I have a letter from a friend who happens to be temporarily a resident of Utah, and who is cognisant of the course of events there transpiring, with regard to some of those who have come to Canada, and he tells me that in some instances the Mormons who have gone into the North-West Territories have for a time left their old wives behind them, but he learns that they have each taken a fresh young one. How long that will last I do not know, but that is their solace at present for their residence in Canada. Notwithstanding the anxiety the hon. members from the North-West have shown during the last few days to promote immigration, I fancy they will not be very anxious to promote immigration of this character, and I do not suppose that any of us feel, under the circumstances, that such immigration is of a useful or wholesome or profitable character. I am not suggesting at this moment that we cannot do more than, by the most careful and comprehensive legislation, provide machinery for the discontinuance or the prevention of these abominable practices which we know these people engage in under pretence of religion. No one who peruses the evidence taken in recent years in the effort to establish the fact of that cohabitation which the hon. gentleman is endeavoring to render criminal here can doubt that this is a matter of extreme difficulty, and that longer experience on the part of those who commit these practices, and the greater precautions they will take to escape detection will render it a matter of still greater difficulty to prevent the continuance of those practices. Therefore it seems to me that we are bound, not merely to support the hon. gentleman in any reasonable effort to stamp out a crime and to render as effective as the circumstances of the case will allow the provisions of any law against the crime, but that also it should be indicated at the earliest hour that it is not words of encouragement but words of discouragement which this Parliament, as the representatives of the people, have for the Mormons and their abuses, and practices, and the views they entertain of civil government and allegiance and on this marriage question, with the intention of carrying out which, I fear, they are coming amongst us.

Mr. BLAKE. It is very well understood that the reason the Mormons left the United States is the difficulty they have with the American Government arising out of this question of polygamy.

Mr. BLAKE. That is a most serious question; and when they object to remaining in another country where the laws are practically the same as here, only, perhaps, less strict, it is difficult to understand why they should come here to obey our laws.

Mr. BLAKE. I desire to ask the Minister of Interior whether he has received any report

from the Lieutenant Governor of the North-West Territories, who, I understand, paid a visit, not very long ago, of two days and two nights to the hamlet in which these people live, and who, I am told, expresses the opinion that they are not quite so monogamous now as is represented?

Mr. BLAKE. I have understood that the Lieutenant Governor of the North-West Territories received an address from these people, and, I think, specially from Mr. Card, whose wife, I understand, is one of the numerous daughters of Brigham Young.

Mr. DEWDNEY. That is not offering inducements to come in there.

Mr. BLAKE. No; but it is inducing them to stay there.

Mr. BLAKE. The hon. member has misunderstood me a little. My position was not that we should pass a law to prevent them from coming in.

Mr. BLAKE. I wish, at any rate, to have it understood that what I said was, that, looking at the whole circumstances, I could not relieve my mind from the impression that these people were coming here in the hope that they would be able to re-establish in our country a condition of things which they had found it difficult to continue in the United States, and that I thought it was important that words of discouragement should fall from the representatives of the people in this country against their coming here with any such notion or idea as that, and that they should learn in a very marked manner that we would not permit the scheme to grow and assume proportions more difficult and more dangerous to grapple with than it is now; and that if they do come here they must come here not merely under a pretence of obeying the law, but that they must do so in reality.

Mr. BLAKE. I do not see why there should not be in this case discretion given to the judge of punishing either by fine or by imprisonment, for, if the offence may be most serious, it may also be most trifling.

Mr. BLAKE. With reference to this, I am not familiar with the practical operation of the law; but a representation has been made to me by a gentleman of very considerable experience in one of the largest centres of population in the Province of Ontario, that the operation of the process of election, when it takes place before a magistrate, without the presence of some responsible functionary representing public justice, is sometimes very unsatisfactory, and that the prisoner does not obtain that information and opportunity for consideration which he ought to have, before deciding on the course he shall take, the result of which is not infrequently, as stated to me, that election takes place, and a hurried trial proceeds and conviction is obtained under circumstances on which conviction should not take place. The suggestion made to me was that there should be fewer facilities for procuring the election, unless in cases where the Crown was represented by some functionary who should see that justice is done towards the prisoner. I am not myself practically acquainted with this matter, but the gentleman who made the suggestion has a great amount of experience; and I would ask the hon. Minister of Justice whether any suggestions have been made to him in that respect?

Mr. BLAKE. Has any provision been made for regulating the method by which intermediate sentences shall be terminated, or by what authority they shall end?

Mr. BLAKE. Would it not be more convenient if the hon. gentleman would put these additional clauses on the paper, with the notice that he would ask our assent to them at the next sitting of the Committee?

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